

West Bountiful City Municipal Code

Title 3 REVENUE AND FINANCE

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Chapter 3.04 SALES AND USE TAX

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3.04.010 Purpose.

The purpose of this chapter is to levy a one-percent sales and use tax effective January 1, 1990, in compliance with the provisions of the Uniform Local Sales and Use Tax Law, Chapter 12, Title 59, Utah Code Annotated 1953, insofar as they relate to sales and use taxes. It is the purpose of this chapter to conform the sales and use tax of the city to the requirements of the Sales and Use Tax Act, Chapter 12, Title 59, Utah Code Annotated 1953, as currently amended.

A. For the purpose of this chapter all retail sales shall be presumed to have been consummated at the place of business delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. In the event a retailer has no permanent place of business, the place or places at which the retail sales are consummated

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shall be as determined under the rules and regulations prescribed and adopted by the State Tax Commission. Public utilities, as defined by Title 54, Utah Code Annotated 1953, shall not be obligated to determine the place or places within any county or municipality where public utilities services are rendered, but the place of sale or the sales tax revenue arising from such service allocable to the city shall be as determined by the State Tax Commission pursuant to an appropriate formula and other rules and regulations to be prescribed and adopted by it.

B. Except as hereinafter provided and except insofar as they are inconsistent with the provisions of the Sales and Use Tax Act, all of the provisions of Chapter 12, Title 59, Utah Code Annotated 1953, as amended and in force and effect on the effective date of the ordinance codified in this chapter, insofar as they relate to sales taxes, excepting Sections 59-12-101 and 59-12-119 thereof, are adopted and made a part of this chapter as though fully set forth herein.

C. Wherever, and to the extent that in Chapter 12, Title 59, Utah Code Annotated 1953, the state of Utah is named or referred to as the taxing agency, the name of the city shall be substituted therefore. Nothing in subsection B of this section shall be deemed to require substitution of the name of the city for the word "state" when that word is used as part of the title of the State Tax Commission or of the Constitution of the state of Utah. Nor shall the name of the city be substituted for that of the state in any section when the result of that substitution would require action to be taken by or against the city or any agency thereof, rather than by or against the State Tax Commission in performing the functions incident to the administration or operation of the ordinance.

D. If an annual license has been issued to a retailer under Section 59-12-106 of the Utah Code Annotated 1953, an additional license shall not be required by reason of this section.

E. There shall be excluded from the purchase price paid or charged by which the tax is measured:

1. The amount of any sales or use tax imposed by the state of Utah upon a retailer or consumer; and
2. The gross receipts from the sale of or the cost of storage, use or other consumption of tangible personal property upon which a sales or use tax has become due by reason of the sale transaction to any other municipality and any county in the state of Utah, under the sales or use tax ordinance enacted by that county or municipality in accordance with the Sales and Use Tax Act. (Prior code § 3-1-1)

3.04.020 Contract with State Tax Commission.

The existing contract between the city and the State Tax Commission, which provides that the Commission will perform all functions incident to the administration and operation of the sales and use tax ordinance of this city, is declared to be in full force and effect, and the mayor is authorized to enter into such supplementary agreement with the State Tax Commission as may be necessary to the continued administration and operation of the local sales and use tax ordinance of the city as reenacted by the ordinance codified in this chapter. (Prior code § 3-1-2)

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3.04.030 Sales tax levied.

There is levied a tax upon every retail sale of tangible personal property, services and means made within the city at the rate of one percent. (Prior code § 3-1-3)

3.04.040 Use tax levied.

An excise tax is levied on the storage, use or other consumption in this city of tangible personal property purchased from any retailer on or after the operative date of the ordinance codified in this chapter at the rate of one percent of the sales price of the property. (Prior code § 3-1-4)

3.04.050 Violations--Penalties.

Any person violating any of the provisions of this chapter shall be deemed guilty of a Class B misdemeanor, and upon conviction thereof, shall be punished by a fine in an amount not over one thousand dollars (\$1,000.00), or imprisonment for a period of not more than six months, or by both such fine and imprisonment. (Prior code § 3-1-5)

Chapter 3.08 MUNICIPAL ENERGY SALES AND USE TAX

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3.08.070 Incorporation of Part 1, Chapter 12, Title 59, Utah Code, including amendments.

3.08.080 Collection and reporting--Additional license not required.

3.08.010 Purpose.

It is the intent of West Bountiful City to adopt the municipal energy sales and use tax, pursuant to, and in conformance with, Utah Code Section 10-1-301 et seq., the Municipal Energy Sales and Use Tax Act. (Ord. 254-98 (part))

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3.08.020 Definitions.

As used in this chapter:

"Consumer" means a person who acquires taxable energy for any use that is subject to the municipal energy sales and use tax.

"Contractual franchise fee" means:

1. A fee:
 - a. Provided for in franchise agreements, and
 - b. That is consideration for the franchise agreements; or
2.
 - a. A fee similar to subsection 1 above; or
 - b. Any combination of subsections 1 or 2.

"Delivered value" means the fair market value of the taxable energy delivered for sale or use in the municipality and includes:

1. The value of the energy itself; and
2. Any transportation, freight, customer demand charges, service charges, or other costs typically incurred in providing taxable energy in usable form to each class of customer in the municipality.

"Delivered value" does not include the amount of a tax paid under Part 1 and Part 2 of Chapter 12, Title 59 of the Utah Code Annotated.

"De minimis amount" means an amount of taxable energy that does not exceed the greater of:

1. Five percent of the energy supplier's estimated total Utah gross receipts from sales of property or services; or
2. Ten thousand dollars (\$10,000.00).

"Energy supplier" means a person supplying taxable energy, except for persons supplying a de minimus amount of taxable energy, if such persons are excluded by rule promulgated by the State Tax Commission.

"Franchise agreement" means a franchise or an ordinance, contract or agreement granting a franchise.

"Franchise tax" means:

1. A franchise tax;

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2. A tax similar to a franchise tax; or
3. A combination of subsections 1 or 2.

"Person" includes any individual, firm, partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, the state of Utah, any county, city, municipality, district, or other local governmental entity of the state of Utah, or any group or combination acting as a unit.

"Sale" means any transfer of title, exchange or barter, conditional or otherwise, in any manner, of taxable energy for a consideration. It includes:

1. Installment and credit sales;
2. Any closed transaction constituting a sale;
3. Any transaction under which the right to acquire, use or consume taxable energy is granted under a lease or contract and the transfer would be taxable if an outright sale were made.

"Storage" means any keeping or retention of taxable energy in West Bountiful City for any purpose except sale in the regular course of business.

"Taxable energy" means gas and electricity

"Use" means the exercise of any right or power over taxable energy incident to the ownership or the leasing of the taxable energy.

"Use" does not include the sale, display, demonstration, or trial of the taxable energy in the regular course of business and held for resale. (Ord. 254-98 (part))

3.08.030 Municipal energy sales and use tax levied.

There is levied, subject to the provisions of this chapter, a tax on every sale or use of taxable energy made within West Bountiful City equaling six percent of the delivered value of the taxable energy to the consumer. This tax shall be known as the municipal energy sales and use tax.

- A. The tax shall be calculated on the delivered value of the taxable energy.
- B. The tax shall be in addition to any sales or use tax on taxable energy imposed by West Bountiful City as authorized by Title 59, Chapter 12, Part 2 of the Utah Code Annotated, the Local Sales and Use Tax Act. (Ord. 254-98 (part))

3.08.040 Exemptions.

- A. No exemptions are granted from the municipal energy sales and use tax except as expressly provided in Utah Code Annotated 10-1-305(2)(b); notwithstanding an exemption granted by 59-1-104 of the Utah Code.

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B. The following are exempt from the Municipal Energy Sales and Use Tax, pursuant to Utah Code Annotated Section 10-1-305-(2)(b) and this chapter, notwithstanding the exemptions granted by Utah Code Annotated Section 59-12-104.

1. Sales and use of aviation fuel, motor fuel and special fuels subject to taxation under Title 59, Chapter 13 of the Utah Code Annotated, Motor and Special Fuel Tax Act;
2. Sales and use of taxable energy that is exempt from taxation under federal law, the United States Constitution, or the Utah Constitution;
3. Sales and use of taxable energy purchased or stored for resale;
4. Sales or use of taxable energy to a person, if the primary use of the taxable energy is for use in compounding or producing taxable energy or fuel subject to taxation under Title 59, Chapter 13 of the Utah Code Annotated, Motor and Special Fuel Tax Act;
5. Taxable energy brought into the state by nonresident for the nonresident's own personal use or enjoyment while within the state, except taxable energy purchased for use in the state by a nonresident living or working in the state at the time of purchase;
6. The sale or use of taxable energy for any purpose other than as a fuel or energy; and
7. The sale of taxable energy for use outside the boundaries of West Bountiful City.

C. The sale, storage, use or other consumption of taxable energy is exempt from the municipal energy sales and use tax levied by this chapter, provided:

1. The delivered value of the taxable energy has been subject to a municipal energy sales or use tax levied by another municipality within the state authorized by Title 59, Chapter 12, Part 3 of the Utah Code Annotated; and
2. West Bountiful City is paid the difference between the tax paid to the other municipality and the tax that would otherwise be due under this chapter, if the tax due under this chapter exceeds the tax paid to the other municipality. (Ord. 254-98 (part))

3.08.050 Effect on existing franchises--Credit for franchise fees.

A. This chapter shall not alter any existing franchise agreements between West Bountiful City and energy suppliers.

B. There is a credit against the tax due from any consumer in the amount of a contractual franchise fee paid if:

1. The energy supplier pays the contractual franchise fee to West Bountiful City pursuant to franchise agreement in effect on July 1, 1998; and

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2. The contractual franchise fee is passed through by the energy supplier to a consumer as a separate itemized charge; and

3. The energy supplier has accepted the franchise. (Ord. 254-98 (part))

3.08.060 Tax collection contract with State Tax Commission.

A. On or before the effective date of this chapter, West Bountiful City shall contract with the State Tax Commission to perform all functions incident to the administration and collection of the municipal energy sales and use tax, in accordance with this chapter.

This contract may be a supplement to the existing contract with the Commission to administer and collect the local sales and use tax, as provided in Section 3.04.020. The mayor, with the approval of the city administrator and city attorney, is authorized to enter into agreements with the State Tax Commission that may be necessary to the continued administration and operation of the municipal energy sales and use tax ordinance enacted by this chapter.

B. An energy supplier shall pay the municipal energy sales and use tax revenues collected from the consumers directly to West Bountiful City monthly if:

1. West Bountiful City is the energy supplier; or

2. a. The energy supplier estimates that the municipal energy sales and use tax collected annually from its Utah consumers equals one million dollars (\$1,000,000.00) or more, and

b. The energy supplier collects the municipal energy sales and use tax.

C. An energy supplier paying the municipal energy sales and use tax directly to West Bountiful City may deduct any contractual franchise fees collected by the energy supplier qualifying as a credit and remit the net tax less any amount the energy supplier retains as authorized by Section 10-1-307(4), Utah Code Annotated. (Ord. 254-98 (part))

3.08.070 Incorporation of Part 1, Chapter 12, Title 59, Utah Code, including amendments.

A. Except as herein provided, and except insofar as they are inconsistent with the provisions of Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act, as well as this chapter, all of the provisions of Part 1, Chapter 12, Title 59 of the Utah Code Annotated 1953, as amended, and in force and effect on the effective date of this chapter, insofar as they relate to sales and use taxes, excepting Sections 59-12-101 and 59-12-119 thereof, and excepting for the amount of the sales and use taxes levied therein, are hereby adopted and made a part of this chapter as if fully set forth herein.

B. Wherever, and to the extent that in Part 1, Chapter 12, Title 59, Utah Code Annotated 1953, as amended, the state of Utah is named or referred to as the "taxing agency," West Bountiful City shall be substituted, insofar as is necessary for the purpose of that part, as well as Part 3, Chapter 1, Title 10, Utah Code Annotated 1953, as amended. Nothing in this subsection shall be

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deemed to require substitution of the name of West Bountiful City for the word "State" when that word is used as part of the title of the State Tax Commission, or of the Constitution of Utah, nor shall the name West Bountiful be substituted for that of the state in any section when the result of such a substitution would require action to be taken by or against West Bountiful City or any agency thereof, rather than by or against the State Tax Commission in performing the functions incident to the administration or operation of said chapter.

C. Any amendments made to Part 1, Chapter 12, Title 59, Utah Code Annotated 1953, as amended, which would be applicable to West Bountiful City for the purpose of carrying out this chapter are incorporated herein by reference and shall be effective upon the date that they are effective as a Utah statute. (Ord. 254-98 (part))

3.08.080 Collection and reporting--Additional license not required.

No additional license to collect or report the municipal energy sales and use tax levied by this chapter is required, provided the energy supplier collecting the tax has a license issued under Section 59-12-106, Utah Code Annotated. (Ord. 254-98 (part))

Chapter 3.12 INNKEEPER LICENSE TAX

Sections:

3.12.010 Tax levied.

3.12.020 Gross receipts.

3.12.030 Remittance of innkeepers tax.

3.12.040 Audit of taxes.

3.12.050 Enforcement of penalties.

3.12.060 Interest allowed.

3.12.070 Contract with state.

3.12.010 Tax levied.

There is levied upon the business of every person, company, corporation, or other like and similar persons, groups or organizations doing business in West Bountiful City, Utah as motor courts, motels, hotels, inns or like and similar public accommodations, an annual license tax equal to one percent of gross revenue derived from the rent for each and every occupancy of a suite, room or rooms, for a period of thirty (30) days or less. (Ord. 258-99 (part): prior code § 3-3-1)

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3.12.020 Gross receipts.

For the purpose of this chapter, gross receipts shall be computed upon the base room rental rate. There shall be excluded from the gross revenue, by which this tax is measured:

A. The amount of any sales or use tax imposed by the state of Utah or by any other government agency upon a retailer or consumer;

B. The amount of a transient room tax levied under authority of Title 59-12-Part 3a of Utah State Code 1998;

C. Receipts from the sale or service charge for any food, beverage or room service charges in conjunction with the occupancy of the suite, room or rooms, not included in the base room rate;

and

D. Charges made from supply telephone service, gas or electrical energy service, not included in the base room rate. (Ord. 258-99 (part): prior code § 3-3-2)

3.12.030 Remittance of innkeepers tax.

The tax imposed by this section shall be due and payable to the city treasurer quarterly on or before the thirtieth day of the month next succeeding each calendar quarterly period, commencing the first day of January 1999. Every person or business taxed hereunder shall, on or before the thirtieth day of the month next succeeding each calendar quarterly period, file with the city a report of its gross revenue for the preceding quarterly period. The report shall be accompanied by a remittance of the amount of tax due for the period covered by the report. (Ord. 258-99 (part): prior code § 3-3-3)

3.12.040 Audit of taxes.

West Bountiful City shall have the right to audit all taxes collected from each and every business of this type within the city limits of West Bountiful City. The city's mayor, financial manager, or any successor head of the executive branch of government, is designated the official of the city having full power and authority to perform this audit. (Ord. 258-99 (part): prior code § 3-3-4)

3.12.050 Enforcement of penalties.

West Bountiful City has the right to enforce all penalties as set forth in Section 59-1-401 of Utah State Code 1998 for failure to file a tax return within the time prescribed. (Ord. 258-99 (part): prior code § 3-3-5)

3.12.060 Interest allowed.

West Bountiful City has the right to charge interest on taxes not paid in a timely manner at the rate as set forth in Section 59-1-402 of Utah State Code 1998. (Ord. 258-99 (part): prior code § 3-3-6)

3.12.070 Contract with state.

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The city may contract with the Utah State Tax Commission to perform all functions incident to the administration and operation of this chapter. (Ord. 258-99 (part): prior code § 3-3-7)

Chapter 3.16 SALE OF UNCLAIMED PROPERTY

Sections:

3.16.010 Storage.

3.16.020 Disposition of property upon adjudication--Custody of property if accused held for trial.

3.16.030 Sale at public auction.

3.16.040 Sale of unclaimed property--Disposition of proceeds.

3.16.010 Storage.

The categories of property listed hereafter shall be delivered to the chief of police, who shall enter or cause to be entered in a record kept for this purpose, a detailed description of the property, together with the name of the person, or persons, from whom received; the names of any claimants thereto; the disposition thereof. The subject categories include: all property or money taken from persons under arrest, or taken under suspicion or with knowledge of its having been stolen or feloniously obtained; all property or money constituting evidence or proceeds of crime, or taken from intoxicated or insane persons, or other persons incapable of taking care of themselves; and all property or money lost or abandoned that may come into the possession of the city. (Ord. 264-00 (part): prior code § 7-3-1)

3.16.020 Disposition of property upon adjudication--Custody of property if accused held for trial.

When any person arrested shall be adjudged innocent of the offense charged by a court of competent jurisdiction, which shall adjudge that the property or money belongs to such person, the chief of police shall thereupon deliver such property or money to him or her personally, and not to his or her attorney or agent, and take his or her receipt therefor. If the accused be held for trial or examination, such money or property shall remain in the custody of the chief of police until the discharge or conviction of the person accused, unless prior thereto he or she has delivered the same to a state or county officer, as provided by law. (Prior code § 7-3-2)

3.16.030 Sale at public auction.

The city recorder or his or her agent in this matter may sell at public auction all unclaimed property that has been in its custody for a period of three months. The recorder shall fix a day upon which the sale shall take place, and shall give notice thereof by publication three times in an official newspaper. The notice shall state the day and hour when such sale shall commence and shall contain a general description of the property to be sold, or shall refer to a list thereof on file with the city recorder. The notice shall be signed by the city recorder or by the person designated by him or her to conduct such public auction. The proceeds of such sale shall, together with all moneys unclaimed for a period of three

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months, be paid into the city treasury. In no case shall any property be sold or disposed of until the necessity for the use thereof as evidence has ceased.

Any property so advertised for sale and for which there is no bidder may be junked or otherwise disposed of, as determined by the city council. (Prior code § 7-3-3)

3.16.040 Sale of unclaimed property--Disposition of proceeds.

A. As used in this section, "public interest use" includes:

1. Use by a government agency; and
2. Donation to a bona fide charity.

B. If custodial property is not claimed by the owner before the expiration of three months from the receipt of notice, or if the owner is unknown and no claim of ownership has been made, the agency having possession of the custodial property may either:

1. Appropriate the property for public interest use as provided in subsection C of this section;

or

2. Sell the property at public auction, as provided by law and appropriate the proceeds of the sale to its own use.

C. Before appropriating the custodial property for public interest use, the agency having possession of the property shall obtain from the legislative body of its jurisdiction:

1. Permission to appropriate the property; and
2. The designation and approval of the public interest use of the property. (Ord. 261-99 §§ 1-3: prior code § 7-3-4)Chapter 3.18

MOBILE TELEPHONE SERVICE REVENUE ACT

Sections:

3.18.010 Definitions.

3.18.020 Monthly tax levied.

3.18.030 Remittance date.

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3.18.040 Requirement to maintain electronic database or enhanced zip code listing.

3.18.050 Place of primary use.

3.18.060 Tax against customer.

3.18.070 Nonapplication.

3.18.080 Implementation date.

3.18.090 Severability.

3.18.010 Definitions.

Definitions. For purposes of this chapter, the following terms are defined as follows:

"Customer" means:

1. The person or entity, having a place of primary use within the city, that contracts with the home service provider for mobile telecommunications services; or
2. If the end user of mobile telecommunications services is not the contracting party, the end user of the mobile telecommunications services; but this subsection applies only for the purpose of determining the place of primary use.

"Customer" does not include:

1. A reseller of mobile telecommunications service; or
2. A serving carrier under an arrangement to serve the customer outside the home service provider's licensed service area.

"Designated database provider" means a corporation, association, or other entity representing all the political subdivisions of a state that is:

1. Responsible for providing an electronic database prescribed in subsection 119(a) of chapter 4, Title 4 of the United States Code if the state has not provided such electronic database;

and

2. Approved by municipal and county associations or leagues of the state whose responsibility it would otherwise be to provide such database prescribed by Sections 116 through 126 of Chapter 4, Title 4 of the United States Code.

"Enhanced zip code" means a United States postal zip code of nine or more digits.

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"Home service provider" means the facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunications services.

"Licensed service area" means the geographic area in which the home service provider is authorized by law or contract to provide commercial mobile radio service to the customer.

"Mobile telecommunications service" means commercial mobile radio service, as defined in Section 20.3 of Title 47 of the Code of Federal Regulations as in effect on June 1, 1999. For purposes of this chapter, mobile telecommunications services shall not include:

1. Pager services using mobile devices that do not allow for two-way voice communication;
2. Narrowband personal communications services; and
3. Short message services (SMS).

"Place of primary use" means the street address representative of where the customer's use of the mobile telecommunications service primarily occurs, which must be:

1. The residential street address or the primary business street address of the customer; and
2. Within the licensed service area of the home service provider.

"Prepaid telephone calling services" means the right to purchase exclusively telecommunications services that must be paid for in advance, that enables the origination of calls using an access number, authorization code, or both, whether manually or electronically dialed, if the remaining amount of units of service that have been prepaid is known by the provider of the prepaid service on a continuous basis.

"Reseller" means:

1. A provider who purchases telecommunications services from another telecommunications service provider and then resells, uses as a component part of, or integrates the purchased services into a mobile telecommunications service; and
2. Does not include a serving carrier with which a home service provider arranges for the service to its customers outside the home service provider's licensed service area.

"Serving carrier" means a facilities-based carrier providing mobile telecommunications service to a customer outside a home service provider's or reseller's licensed service area. (Ord. 271-00 § 2 (part))

3.18.020 Monthly tax levied.

There is levied upon every home service provider a tax of one dollar per month for each telephone number assigned to any customer whose place of primary use is within the city. The home service provider may or may not pass this tax on to its customers. If the home service provider passes the tax on to the customer, and the tax is reflected on the customer's bill, the tax shall be shown on the bill as a flat rate municipal tax charge. (Ord. 271-00 § 2 (part))

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3.18.030 Remittance date.

A. Within thirty (30) days after the end of each calendar month, the home service provider taxed hereunder shall file, with the city treasurer, a report computing the tax. Coincidental with the filing of such report, the business shall pay, to the city treasurer, the amount of the tax due for the calendar month subject to the report. If the thirtieth (30th) day after the end of each calendar month falls on a Saturday, Sunday, or state or federal holiday, the deadline for filing the monthly report and remitting payment for that month is extended to the next subsequent business day.

B. Delinquent Payment. Any payment not paid when due shall be subject to a delinquency penalty charge of ten percent (10%) of the unpaid amount. Failure to make full payment and penalty charges within sixty (60) days of the applicable payment date shall constitute a violation of this chapter. All overdue amounts, including penalty charges, shall bear interest until paid at the rate of an additional ten percent (10 %) per annum.

C. Reconciliation. Within three years after the filing of any report or the making of any payment, the city treasurer may examine such report or payment, determine the accuracy thereof, and, if the city treasurer finds any errors, report such errors to the home service provider for correction. If any tax, as paid, shall be found deficient, the home service provider shall within sixty (60) days remit the difference, and if the tax as paid is found excessive, the city shall within sixty (60) days refund the difference plus interest at the same rate as if such amount was deficient.

In the event of a disagreement, the home services provider shall file under protest pending the resolution of the dispute between the parties or through the courts.

D. Record Inspection. The records of the home service provider pertaining to the reports and payment of the tax, including, but not limited to, any records deemed necessary by the city to calculate or confirm proper payment by the home service provider, shall be open for inspection by the city and its duly authorized representatives upon reasonable notice at all reasonable business hours of the home services provider within the statute of limitations period defined in subsection C of this section.

E. Home Service Provider--Duty to Cooperate on Record Inspection.

1. In order to facilitate any record inspection, the home service provider shall, upon thirty (30) days' prior written request:

a. Grant the city or its duly authorized representatives reasonable access to those portions of the books and records of the home service provider necessary to calculate and confirm property payment of the tax; or

b. Provide the city or its duly authorized representatives with reports containing or based on information necessary to calculate and confirm proper payment of the tax.

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2. Any requests for such books, records, reports, or portions thereof shall specify in writing the purpose for such request. Any books, records, reports, or portions thereof provided by the home service provider to the city under a claim that such documents are confidential business records are designated as "protected records" and shall not be copied or disclosed by the city to third parties without the written permission of the home service provider, unless such documents are determined by a court of law to constitute "public records" within the meaning of the Utah Government Records Access and Management Act. (Ord. 271-00 § 2 (part))

3.18.040 Requirement to maintain electronic database or enhanced zip code listing.

A. Electronic Database.

1. Provision of Database. The state may provide an electronic database to a home service provider; or, if the state does not provide such an electronic database, the designated database provider may choose to provide an electronic database to a home service provider.

2. Format.

a. Such electronic database, whether provided by the state or the designated database provider, shall be provided in a format approved by the American National Standards Institute's Accredited Standards Committee X12, which, allowing for de minimis deviations, designates for each street address in the city, including, to the extent practicable, any multiple postal street addresses applicable to one street location, the appropriate taxing jurisdictions, and the appropriate code identified by one nationwide standard numeric code

b. Such electronic database shall also provide the appropriate code for each street address with respect to political subdivisions that are not taxing jurisdictions when reasonably needed to determine the proper taxing jurisdiction.

c. The nationwide standard numeric codes shall contain the same number of numeric digits, with each digit or combination of digits referring to the same level of taxing jurisdiction throughout the United States, using a format similar to FIPS 55-3 or other appropriate standard approved by the Federation of Tax Administrators and the Multistate Tax Commission or their successors. Each address shall be provided in standard postal format.

B. Notice--Updates. The state or designated database provider that provides or maintains an electronic database as described above shall provide notice of the availability of the then-current electronic database and any subsequent revisions thereof, by publication in the manner normally employed for the publication of informational tax, charge, or fee notices to taxpayers in such state.

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C. User Held Harmless. A home service provider using the data contained in an electronic database described above shall be held harmless from any tax, charge, or fee liability that otherwise would be due solely as a result of any error or omission in such database provided by the city or designated database provider. The home service provider shall reflect changes made to such database during a calendar quarter, not later than thirty (30) days after the end of such calendar quarter the state has issued notice of the availability of an electronic database reflecting such changes under subsection B of this section.

D. Procedure If No Electronic Database Provided.

1. Safe Harbor. If neither the state nor the designated database provider provides an electronic database, a home service provider shall be held harmless from any tax, charge, or fee liability in the city that otherwise would be due solely as a result of an assignment of a street address to an incorrect taxing jurisdiction, if the home service provider employs an enhanced zip code to assign each street address to a specific taxing jurisdiction and exercises due diligence to ensure that each such street address is assigned to the correct taxing jurisdiction. If an enhanced zip code overlaps boundaries of taxing jurisdictions of the same level, the home service provider must designate one specific jurisdiction within such enhanced zip code for use in taxing the activity for such enhanced zip code. Any enhanced zip code assignment changed is deemed to be in compliance with this section. For purposes of this section, there is a rebuttable presumption that a home service provider has exercised due diligence if the home service provider demonstrates that it has:

- a. Expended reasonable resources to implement and maintain an appropriately detailed electronic database of street address assignments to taxing jurisdictions;
- b. Implemented and maintained reasonable internal controls to promptly correct misassignments of street addresses to taxing jurisdictions; and
- c. Used all reasonably obtainable and usable data pertaining to municipal annexations, incorporations, reorganizations, and any other changes in jurisdictional boundaries that materially affect the accuracy of such database.

2. Termination of Safe Harbor. Subsection (D)(1) of this section, "Safe Harbor," applies to a home service provider that is in compliance with the requirements of the "Safe Harbor" subsection with respect to a state for which an electronic database is not provided, until the later of:

- a. Eighteen (18) months after the nationwide standard numeric code has been approved by the Federation of Tax Administrators and the Multistate Tax Commission; or
- b. Six (6) months after the state or a designated database provider in the state provides such database. (Ord. 271-00 § 2 (part))

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3.18.050 Place of primary use.

A. A home service provider is responsible for obtaining and maintaining the customer's place of primary use. Subject to Section 3.18.040, and if the home service provider's reliance on information by its customer is in good faith, a home service provider:

1. May rely upon the applicable residential or business street address supplied by the home service provider's customer;
2. Is not liable for any additional taxes, charges, or fees based on a different determination of the place of primary use for taxes, charges, or fees that are customarily passed on to the customer as a separate address under existing agreements.

B. A home service provider may treat the address used by the home service provider for tax purposes for any customer under a service contract or agreement in effect two years after the date of the ordinance codified in this chapter as that customer's place of primary use for the remaining term of such service contract or agreement, excluding any extension or renewal of such service contract or agreement, for purposes of determining the taxing jurisdiction to which taxes, charges, or fees on charges for mobile telecommunication services are remitted. (Ord. 271-00 § 2 (part))

3.18.060 Tax against customer.

Each customer shall accurately report the customer's place of primary use. The customer shall be liable for any taxes not paid by the home service provider as a result of the customer's failure to accurately report the customer's place of primary use. (Ord. 271-00 § 2 (part))

3.18.070 Nonapplication.

This chapter does not apply to the determination of the taxing status of:

- A. Prepaid telephone calling services; or
- B. Air-ground radiotelephone service, as defined in Section 22.99 of Title 47 of the Code of Federal Regulations as in effect on June 1, 1999. (Ord. 271-00 § 2 (part))

3.18.080 Implementation date.

If the ordinance codified in this chapter is adopted before January 1, 2001, a home service provider shall have a minimum of thirty (30) days' notice before being obligated to collect the tax described in this chapter. After January 1, 2001, a home service provider shall have a minimum of sixty (60) days' notice before being obligated to collect the tax described in this chapter. After January 1, 2001, a home service provider shall receive a minimum of sixty (60) days' notice regarding any changes to this chapter. (Ord. 271-00 § 2 (part))

3.18.090 Severability.

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If Section 3.18.020 is for any reason determined to be, or is rendered, illegal, invalid, or superceded by other lawful authority, including any state or federal, legislative, regulatory, or administrative authority having jurisdiction thereof, or determined to be unconstitutional, illegal, or invalid by any court of competent jurisdiction, such section shall be deemed a separate, distinct, and independent provision, and such determination shall have no effect on the validity of any other section; provided, however, upon such event and in lieu of such tax, there is levied upon every home service provider a tax equal to six percent of the annual gross revenue of the home service provider generated from services and products to customers. (Ord. 271-00 § 3)

Chapter 3.20 PROCUREMENT

Sections:

3.20.010 Procurement system.

3.20.020 Compliance.

3.20.030 Definitions.

3.20.040 Purchasing agent.

3.20.050 Budget limitation.

3.20.060 Purchase orders.

3.20.070 Classification of expenditures.

3.20.080 Formal bidding procedure.

3.20.090 Informal bidding procedure.

3.20.100 Additional data.

3.20.110 Delivery.

3.20.120 Petty cash.

3.20.130 Disposal of surplus property.

3.20.140 Ethics.

3.20.150 Records.

3.20.160 Violations.

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3.20.170 Appeals.

3.20.010 Procurement system.

There is established a procurement system to provide procedures and guidelines for the procurement of supplies, services, and construction for the city, and to ensure that all such purchases or encumbrances are made equitably, efficiently and economically. (Ord. 270-00 (part): prior code § 3-3-010)

3.20.020 Compliance.

All expenditures of the city shall conform to the provisions of this chapter and applicable provisions of state law, including the Uniform Fiscal Procedures Act, Utah Code Ann. § 10-6-101, et seq., as amended, and applicable provisions of the Utah Procurement Code, Utah Code Ann. § 63-56-1, as amended. Any expenditures of the city involving federal assistance funds shall comply with applicable federal law and regulations. Any expenditure of the city involving the construction, maintenance or improvement project of a class B or C road or work excluded under Utah Code Ann. § 10-7-20, as amended, shall comply with applicable provisions of the State Highway Code, including Utah Code Ann. §§ 72-2-107 to 71-1-110 as amended. No check or warrant to cover any claim against appropriations may be drawn until the claim has been processed according to the relevant provisions of this chapter. (Ord. 270-00 (part): prior code § 3-3-020)

3.20.030 Definitions.

As used in this chapter, the following words shall have the following meanings:

"Construction" means the process of building, renovation, alteration, improvement, or repair of any public building or public work. "Construction" does not mean the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.

"Person" means any individual, firm, partnership, trust, limited liability company, corporation, or other entity however designated.

"Procurement" means buying, purchasing, renting, leasing, leasing with an option to purchase, or otherwise acquiring any supplies, services, or construction, and all functions that pertain to the obtaining of any supply, service, or construction, including the solicitation of sources, contract selection process, contract award, and all phases of contract administration.

"Professional services" means the furnishing of services for auditing, banking, insurance, engineering, legal, architectural, and other forms of professional consulting.

"Responsible bidder" means a person who submits a bid to furnish supplies, services or construction for the city pursuant to and in accordance with the terms and conditions of this chapter and who furnishes, when requested, sufficient information and data to prove his or her financial resources, production or service facilities, service reputation and experience are adequate to the satisfaction of the city.

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"Services" means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports that are merely incidental to the required performance.

"Services" does not include employment agreements or collective bargaining agreements.

"Supplies" means all property, including equipment, materials, and printing. "Supplies" does not include real property or any interest in real property. (Ord. 270-00 (part): prior code § 3-3-030)

3.20.040 Purchasing agent.

The city administrator is designated as the purchasing agent for the city. The purchasing agent shall be subject to the direction and supervision of the city council and shall have the powers and duties concerning procurement as established in this chapter, including:

- A. Administer and interpret the procurement system provided in this chapter in accordance with any rules and regulations established by the city;
- B. Procure or supervise the procurement of all supplies, services, and construction needed by the city, including preparation of specifications and negotiation of contracts;
- C. Exercise general supervision and control over all inventories or supplies of the city and the inspection of and accounting for all such inventories or supplies;
- D. Prepare and maintain forms and reports as are reasonably necessary to the operation of this chapter and other rules and regulations of the city;
- E. Keep generally informed of current developments in the field of procurement, including but not limited to market conditions and new products; and
- F. Recommend to the city council from time to time such new or revised procurement rules and regulations as are desirable and in conformance with other statutory requirements. (Ord. 270-00 (part): prior code § 3-3-040)

3.20.050 Budget limitation.

No expenditure or encumbrance shall be made for any supplies, services or construction for the city in excess of total appropriations in the budget, as adopted or subsequently amended by the city, without prior written approval from the city administrator or the city council. (Ord. 270-00 (part): prior code § 3-3-050)

3.20.060 Purchase orders.

Before any order may be placed for the purchase of any supply, service or construction greater than one hundred dollars (\$100.00), a purchase order form shall be filled out and submitted to the purchasing agent if the purchase is for more than five thousand dollars (\$5,000.00), or to the department head if it is for less than five thousand dollars (\$5,000.00). The purchasing agent or department head, as appropriate, shall review all purchase orders and determine whether the expenditure requested is for a city purpose, properly budgeted, and in compliance with city ordinances and state law. If the purchasing

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agent or department head determines the expenditure requested complies with these requirements, he or she shall sign the purchase order and initiate the appropriate procedures set forth in this chapter for procurement of the supply, service or construction. A purchase order shall not be required for purchases under one hundred dollars (\$100.00). (Ord. 270-00 (part): prior code § 3-3-060)

3.20.070 Classification of expenditures.

A. Large Expenditures. Except as otherwise provided in this chapter, any expenditure of the city for supplies or services of twenty thousand dollars (\$20,000.00) or more or construction of improvements to be paid out of the general funds of the city of twenty-five thousand dollars (\$25,000.00) or more shall be referred to as a "large expenditure" and shall be made pursuant to formal bidding procedures set forth in Section 3.20.080. No large expenditure shall be made without prior approval from the city council.

B. Small Expenditures. Except as otherwise provided in this chapter, any expenditure of the city for supplies or services of less than twenty thousand dollars (\$20,000.00) or construction of improvements to be paid out of the general funds of the city of less than twenty-five thousand dollars (\$25,000.00) shall be referred to as a "small expenditure" and may be made pursuant to formal bidding procedures set forth in Sections 3.20.080 or 3.20.090. Small expenditures may be made by the purchasing agent without prior approval from the city council. It is unlawful to artificially divide a purchase or expenditure so as to constitute a small expenditure under this section.

C. Exempt Expenditures. The following expenditures of the city shall be referred to as "exempt expenditures" and may be made without formal or informal bidding procedures, but should be made with as much competition as practicable under the circumstances. The purchasing agent or his designee shall determine that an expenditure falls within one of these exemptions. All exempt expenditures shall be reviewed by the city council on at least a quarterly basis.

1. Minor. Any expenditure amounting to less than two thousand dollars (\$2,000.00). It is unlawful to artificially divide a purchase or expenditure so as to constitute a minor expenditure under this subsection;

2. Single Source. Any expenditure for goods or services which by their nature are not reasonably adapted to award by competitive bidding. These expenditures include goods or services which can be purchased only from a single source; contracts for additions to and repair and maintenance of equipment already owned by the city which may be more efficiently added to, repaired or maintained by a certain person or firm; and equipment which, by reason of the training of city personnel or an inventory of replacement parts, is compatible with the existing equipment owned by the city. Prior to any expenditure under this subsection, the purchasing agent or city council, as the case may be, shall determine in writing that the requirements of this subsection have been satisfied;

3. Professional Services. Any expenditure for professional services which by their nature are not reasonably adapted to award by competitive bidding. Such expenditures shall be awarded at the discretion of the city council based on the city council's evaluation of the

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professional qualifications, service ability, experience, cost of services, and other applicable criteria;

4. Emergency. Any expenditure made under the existence of an emergency condition such as when a breakdown in machinery or in an essential service occurs or when unforeseen circumstances arise which threaten the public's health, welfare or safety;

5. State Bidding. Any expenditure for which competitive bidding or price negotiation has already occurred on the state level;

6. Interlocal Cooperation. Any expenditure made in conjunction with an agreement approved by resolution of the city council between the city and another city or governmental entity;

7. Special Sale. Any expenditure made in conjunction with any public auction, closeout sale, bankruptcy sale or other similar sale when the purchasing agent or city council, as the case may be, determines in writing that such purchase may be made at a cost below the market cost for the same or similar goods and such determination is reviewed and approved by the city council;

8. Exchanges. Any exchange of supplies, materials, property, or equipment between the city and any other public or private party made by mutual agreement of the respective parties. (Ord. 270-00 (part): prior code § 3-3-070)

3.20.080 Formal bidding procedure.

Except as otherwise provided herein, all large expenditures shall be made by written contract between the city and the lowest responsible bidder according to the following procedure:

A. Specifications. Specifications shall be prepared by or under the direction of the purchasing agent and submitted to the city council for approval and authorization prior to any advertisement for bids.

B. Invitation for Bids. An invitation for bids shall be prepared by or under the direction of the purchasing agent. The invitation shall:

1. Describe the goods or services to be purchased or work to be performed;
2. Set forth all contract terms, conditions and bond requirements applicable to the purchase or work;
3. Set forth the criteria that will be used to evaluate the bid;
4. State where plans, specifications and other information may be obtained;
5. State the time and place of the bid opening; and

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6. Reserve for the city the right to reject any and all bids for any reason without liability.

C. Notice. The invitation for bids shall be published at least twice in a newspaper of general circulation in the jurisdiction of the city at least five days prior to the opening of bids. In the event there is no newspaper of general circulation printed or published within the jurisdiction of the city, the notice shall be posted at least five days prior to the opening of bids in at least five public places in the city which notice shall remain posted for at least three days.

D. Amending Invitation. The invitation to bid may be amended, supplemented, or cancelled at any time prior to the opening of bids when the purchasing agent determines that such action is in the best interest of the city. The reasons for the amendment or cancellation of the invitation shall be stated in writing and shall be made a part of the city's records.

E. Sealed Bids. All bids shall be received by the city in sealed envelopes labeled "Bid for (item)." The envelopes shall not be opened prior to the time set for opening of the bids, except as provided in subsection F of this section.

F. Correction of Bids. The purchasing agent may permit correction or withdrawal of inadvertently erroneous bids in appropriate circumstances, provided that no changes in bid prices or other provisions of bids which are prejudicial to the interest of the city or fair competition shall be permitted. Any decision to permit the correction or withdrawal of bids shall be supported by a written determination prepared by the purchasing agent.

G. Opening Bids. The bids shall be opened publicly by the purchasing agent in the presence of one or more witnesses at the time and place designated in the invitation for bids.

H. Recording Bids. The total amount of each bid and the name of the bidder shall be read aloud as the bids are opened, and such information shall be recorded and open to public inspection during regular business hours for a period of not less than thirty (30) days after the bid opening.

I. Evaluating Bids. The bids shall be evaluated within a reasonable time by the purchasing agent to determine the lowest responsible and responsive bidder based upon the following criteria as set forth in the invitation for bids:

1. Price. The total price of the bid;
2. Quality. The overall quality of the goods or work to be provided and/or the ability, capacity and skill of the bidder to provide any services or work required;
3. Conditions. The number and scope of any conditions or qualifications set forth in the bid;
4. Time. The time limit within which the bidder can provide the goods, services or work;
5. Reputation. The character, integrity, reputation, judgment, experience and efficiency of the bidder and the quality of previous goods, services or work obtained from the bidder;

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6. Compliance. The previous and existing compliance by the bidder with laws and ordinances relating to the goods, services or work;

7. Financial Resources. The sufficiency of the financial resources and ability of the bidder to provide the goods, services or work;

8. Future Service. The ability of the bidder to provide future maintenance and service and the local availability of parts, materials, and supplies.

J. Determination. The purchasing agent shall determine the lowest responsible bidder and communicate such determination, in writing, to the city council. The city council may accept, reject, or modify the purchasing agent's determination and thereupon award the contract or reject any and all bids. All information relating to the selection of the lowest responsible and responsive bidder shall be retained by the city in accordance with Chapter 2.56.

K. Cancellation and Rejection of Bids. The city reserves the right to cancel an invitation for bids or to reject any or all bids for any reason. Such cancellation or rejection shall be in writing and shall be made part of the city's records. In the event all bids are rejected and the city determines to make the improvement or purchase, it shall advertise anew as provided in this chapter. If after twice advertising, no satisfactory bid is received, the city council may proceed to negotiate or make the improvement or acquisition or enter such other agreements as it deems necessary or desirable.

L. Tie Bids. If two or more bids received are for the same total amount or unit price, quality and service being equal, and if the public interest will not permit the delay of readvertising for bids, the city council shall accept the lowest bid made by and after negotiation with the tie bidders after the time of the bid opening.

M. Single Bid. In the event only one bid is received, the bidder may be required to furnish a detailed cost proposal for audit and the bid award may be subject to subsequent negotiation.

N. Bonds. Bid, performance and/or payment bonds may be required in conjunction with any bid or contract entered hereunder in such form and amounts as required by law and by the city council as reasonably necessary to protect the best interest of the city.

O. Responsibility of Bidder. The purchasing agent may request additional information with respect to the responsibility of a bidder. The unreasonable failure of a bidder to promptly supply information in connection with a request of the purchasing agent regarding responsibility may be grounds for a determination of nonresponsibility and/or nonresponsiveness of the bidder. (Ord. 270-00 (part): prior code § 3-3-080)

3.20.090 Informal bidding procedure.

Except as otherwise provided in this chapter, all small expenditures of the city may be awarded to the lowest responsible bidder according to the formal bidding procedure set forth above, or to the lowest responsible bidder according to the following procedure:

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A. Invitation of Bids. The purchasing agent or his designee shall invite bids from at least three potential, responsible providers of the supplies, services or construction needed or desired. Such invitations may be made in writing or orally, including by telephone, and shall be made without unfair favoritism or bias. A record of all invitations and bids made in this section shall be kept by the purchasing agent.

B. Evaluation. The purchasing agent shall evaluate the bids to determine the lowest responsible bidder based upon the criteria set forth in Section 3.20.080(I).

C. Determination. The purchasing agent shall determine the lowest responsible and responsive bidder and award the contract to such bidder. All information relating to the bids obtained and the selection of the lowest responsible bidder shall be retained by the city in accordance with Chapter 2.56. (Ord. 270-00 (part): prior code § 3-3-090)

3.20.100 Additional data.

Any additional relevant data pertaining to the selected bidder shall be added to the purchase order or contract documents. If required by law, a written contract shall be entered into between the city and the selected bidder. Contracts involving construction work shall further provide for a bid security in the amount equal to at least five percent of the amount of the bid. (Ord. 270-00 (part): prior code § 3-3-100)

3.20.110 Delivery.

When supplies ordered are delivered, the purchasing agent, or the employee who requested the supplies, shall inspect the supplies received to assure that the correct quantity and quality have been delivered. If the supplies delivered are satisfactory, the supplies shall be accepted and a copy of the packing slip, invoice, or other delivery document shall be stapled to the purchase order and forwarded to the appropriate employee for review, payment and filing. (Ord. 270-00 (part): prior code § 3-3-110)

3.20.120 Petty cash.

A. Fund. The city shall maintain a petty cash fund. The total amount of cash, vouchers, and receipts in the petty cash fund shall not exceed one hundred dollars (\$100.00). The petty cash fund shall be kept in a locked box and maintained by the finance department.

B. Limits. Any employee of the city may receive up to fifty dollars (\$50.00) from the petty cash fund for any lawful and necessary expenditure to be made on behalf of the city. Employees shall not receive any money from the petty cash fund for personal use.

C. Procedure. Any employee receiving money from the petty cash fund shall sign a petty cash voucher showing the amount received and an explanation of the intended use of the money.

Within a reasonable time after making the expenditure, the employee shall return any excess money to the petty cash fund and staple the receipt for the expenditure to the petty cash voucher.

D. Replenishing Fund. When money in the petty cash fund becomes less than approximately twenty-five dollars (\$25.00), the purchasing agent shall draft a check to the petty cash fund to

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raise the amount of currency in the fund to one hundred dollars (\$100.00). (Ord. 270-00 (part): prior code § 3-3-120)

3.20.130 Disposal of surplus property.

The city shall have the authority to sell, lease, convey and dispose of real and personal property for the benefit of the city as provided by Utah Code Ann. § 10-8-2, as amended. All disposal, leases, or subleases of such property of the city shall be made, as nearly as possible, under the same conditions and limitations, including notice and bidding procedures, as required by this chapter for the purchase of property. The city council may also authorize at its discretion and under such terms and conditions as it may deem desirable, fair, and appropriate considering intended use, property tax value, and the interests of the city, the sale of any surplus property at public auction; the trade or exchange of any surplus property; and the lease or sublease of any surplus property. (Ord. 270-00 (part): prior code § 3-3-130)

3.20.140 Ethics.

A. Conflicts of Interest. No officer or employee of the city may have a direct or indirect pecuniary interest in any contract entered into by the city and all officers and employees are required to comply with applicable provisions of state law regarding ethics, including the Utah Municipal Officers' and Employees' Ethics Act, Utah Code Ann. § 10-3-1301, et seq., as amended and adopted by the city.

B. Collusion. Any agreement or collusion among bidders or prospective bidders to bid a fixed price or to otherwise restrain competition shall render the bids of such bidders void.

C. Personal Use. Any purchase of supplies or equipment by the city for the personal use of any officer or employee of the city is prohibited.

D. Violation. Any violation of this section by an officer or employee of the city shall be cause for disciplinary action, up to and including termination, in accordance with the disciplinary procedures of the city. (Ord. 270-00 (part): prior code § 3-3-140)

3.20.150 Records.

All procurement records of the city shall be retained and disposed of in accordance with Chapter 2.56. (Ord. 270-00 (part): prior code § 3-3-150)

3.20.160 Violations.

Any purchase or contract executed in violation of the provisions of this chapter or applicable state law shall be void as to the city, and any funds expended thereupon may be recovered by the city through appropriate action. (Ord. 270-00 (part): prior code § 3-3-160)

3.20.170 Appeals.

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A. Determinations Final. Determinations of the purchasing agent and the city council required in this chapter shall be final and conclusive.

B. Appeal. Any person aggrieved of a determination of the purchasing agent or city council or in connection with the provisions of this chapter may appeal the determination or action within ten (10) working days after the aggrieved person knows or should have known of the facts giving rise thereto by filing a written protest and the reasons therefor with the city council. A protest with respect to an invitation for bids shall be submitted in writing prior to the opening of bids unless the aggrieved person did not know or could not have known of the facts giving rise to the protest prior to bid opening.

C. Decision. The city council shall promptly issue a written decision regarding any protest stating the reasons for the decision and informing the protestor of any right to judicial review as provided by law. A copy of the decision shall be provided to all parties.

D. Settlement. The city council shall have the authority, prior to or after the commencement of an action in court concerning the protest, to settle and resolve the protest. (Ord. 270-00 (part): prior code § 3-3-170)

Chapter 3.22 IMPACT FEES

Sections:

3.22.010 Purpose.

3.22.020 Definitions

3.22.030 Written Impact Fee Analysis

3.22.040 Impact Fee Calculations

3.22.050 Maximum Allowable Impact Fee Schedules

3.22.060 Fee Exceptions and Adjustments

3.22.070 Appeal Procedure

3.22.080 Miscellaneous

3.22.010 Purpose

This Impact Fee Policy is promulgated pursuant to the requirements of the Impact Fees Act, Utah Code Annotated §11-36-101-501 (the "Act"). This ordinance establishes impact fees within the West Bountiful City-wide Service Area, describes certain capital improvements to be funded through impact fees and

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provides a schedule of impact fees for differing types of land-use development, and sets forth direction for challenging and appealing impact fees.

3.22.020 Definitions

Words and phrases that are defined in the Act shall have the same definition in this Impact Fee Policy. The following words and phrases shall have the following meanings:

1. **“Capital Projects Summary”** refers to the Capital Improvements Plan requirement in Section 11-36-201(2)(e) of the Act which states that any city of 5,000 or less in population shall complete a reasonable Capital Projects Summary. The City has met this requirement by completing a Capital Projects Summary for culinary water, storm water drainage, parks & recreation, and public safety facilities in accordance with the Act. The Capital Projects Summary is included in Appendix B, the contents of which are hereby incorporated as though fully set forth herein.
2. **“Development activity”** means any construction or expansion of building, structure or use, any change in use of building or structure, or any change in the use of land that creates additional demand and need for public facilities. Development activity will include residential and commercial users who will connect to the City’s water system and will utilize the City’s storm water, parks and recreation, and public safety systems.
3. **“Development approval”** means any written authorization from the City that authorizes the commencement of development activity.
4. **“City”** means a local political subdivision of the State of Utah and is referred to herein as West Bountiful City (the “City”).
5. **“Impact fee”** means a payment of money imposed upon development activity as a condition of development approval. “Impact fee” includes development impact fees, but does not include a tax, a special assessment, a hookup fee, a building permit fee, a fee for project improvements, or other reasonable permit or application fees.
6. **“Project improvements”** means site improvements and facilities that are planned and designed to provide service for development resulting from a development activity and are necessary for the use and convenience of the occupant or users of development resulting from a development activity. “Project improvements” do not include “system improvements” as defined below.
7. **“Proportionate share”** of the cost of public facility improvements means an amount that is roughly proportionate and reasonably related to the service demands and needs of a development activity.
8. **“Public facilities”** means Culinary Water, Storm Water, Parks & Recreation, and Public Safety improvements of the City for the West Bountiful City-wide Service Area.

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9. **“Service area”** refers to a geographic area designated by the City based on sound planning or engineering principles in which a defined set of the City’s public facilities provides service. The service area for purposes of the Written Impact Fee Analysis includes all areas within the jurisdictional boundaries of the City. (Appendix A: Map of the West Bountiful City-wide Service Area)

10. **“System improvements”** refer both to existing public facilities designed to provide services within the West Bountiful City-wide Service Area and to future public facilities identified in reasonable plan for capital improvements adopted by the City that are intended to provide service to the West Bountiful Citywide Service Area. “System improvements” do not include “Project improvements” as defined above.

3.22.030 Written Impact Fee Analysis

Executive Summary. A summary of the findings of the Written Impact Fee Analysis that is designed to be understood by a lay person is included in Appendix C and demonstrates the need for impact fees to be charged to fairly show costs related to capital infrastructure. A copy of the Executive Summary is included in the Written Impact Fee Analysis and has been available for public inspection prior to the adoption of this ordinance.

Written Impact Fee Analysis. The City has prepared a Written Analysis for the Culinary Water, Storm Water, Parks & Recreation, and Public Safety impact fees that identifies the impact upon the individual systems required by the development activity and demonstrates how those impacts on system improvements are reasonably related to the development activity, estimates the proportionate share of the costs of impacts on system improvements that are reasonably related to the development activity and identifies how the impact fees are calculated. A copy of the Written Impact Fee Analysis is included in Appendix C of the Impact Fee Ordinance and has been available for public inspection prior to the adoption of this ordinance.

Proportionate Share Analysis. The City has prepared a Proportionate Share Analysis analyzing whether or not the proportionate share of the costs of public facilities is reasonably related to the new development activity. The Proportionate Share Analysis identifies the costs of existing public facilities, the manner of financing existing public facilities, the relative extent to which new development will contribute to the cost of existing facilities and the extent to which new development is entitled to a credit for payment towards the costs of new facilities from general taxation or other means apart from user charges in other parts of the City. A copy of the Proportionate Share Analysis is included in the Written Impact Fee Analysis and has been available for public inspection prior to the adoption of this ordinance.

3.22.040 Impact Fee Calculations

1. **Ordinance Enacting Impact Fees.** The City Council will, by this ordinance, approve an impact fee schedule in accordance with the Written Impact Fee Analysis set forth in Appendix C: West Bountiful Citywide Written Impact Fee Analysis.

a. **Elements.** In calculating the impact fee, the City has included the construction costs, land acquisition costs, costs of improvements, fees for planning, surveying, and

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engineering services provided for and directly related to the construction of system improvements, and debt service charges if the City might use impact fees as revenue stream to pay principal and interest on bonds or other obligations to finance the cost of system improvements.

b. **Notice and Hearing.** Before approving the ordinance, the City will hold a public hearing on December 17, 2002, and make a copy of the ordinance, Written Impact Fee Analysis, and corresponding Capital Facilities Plan available to the public in the West Bountiful City library and the West Bountiful City offices at least fourteen (14) days before the date of the hearing, all in conformity with the requirements of Utah Code Annotated 10-9-103(2). After the public hearing, the City Council may adopt or reject the impact fee ordinance as proposed or amend the impact fee ordinance and adopt or reject it as amended.

c. **Adjustments.** The standard impact fee may be adjusted at the time the fee is charged in response to unusual circumstances or to fairly allocate costs associated with impacts created by a development activity or project. The standard impact fee may also be adjusted to insure that impact fees are imposed fairly for affordable housing projects, in accordance with the local government's affordable housing policy, and other development activities with broad public purposes.

d. **Previously Incurred Costs.** To the extent that the new growth and development will be served by previously constructed improvements, the City's impact fee may include outstanding bond costs related to the existing culinary water, storm water, parks & recreation, and public safety improvements. These costs may include all projects included in the reasonable capital projects plan which are under construction or completed but have not been utilized to their capacity, as evidenced by outstanding debt obligations.

2. **Developer Credits.** Development may be allowed a credit against impact fees for any dedication or improvement to land or new construction of system improvements provided by the developer provided that (i) it is identified in the City's Capital Facilities Plan and (ii) required by the City as a condition of approving the development activity. Otherwise, no credit may be allowed.

3. **Impact Fees Accounting.** The City will establish separate interest-bearing ledger accounts for each type of public facility for which an impact fee promulgated in accordance with the requirements of the Impact Fees Act deposited in the appropriate ledger account. Interest earned on each fund or account shall be segregated to that account. Impact fees collected prior to the effective date of this Ordinance need not meet the requirements of this section.

a. **Reporting.** At the end of each fiscal year, the City shall prepare a report on each fund or account generally showing the source and amount of all monies collected, earned and received by the fund or account and each expenditure from the fund or account.

b. **Impact Fee Expenditures.** The City may expend impact fees covered by the Impact Fees Policy only for system improvements that are (i) public facilities identified in the

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City's reasonable capital projects plan and (ii) of the specific public facility type for which the fee was collected.

c. **Time of Expenditure.** Impact fees collected pursuant to the requirements of this Impact Fees Policy are to be expended, dedicated or encumbered for a permissible use within six years of the receipt of those funds by the City, unless the City Council otherwise directs. For purposes of this calculation, the first funds received shall be deemed to be the first funds expended.

d. **Extension of Time.** The City may hold previously dedicated or unencumbered fees for longer than six years if it identifies in writing (i) an extraordinary and compelling reason why the fees should be held longer than six years and (ii) an absolute date by which the fees will be expended.

4. **Refunds.** The City shall refund any impact fees paid by a developer, plus interest actually earned when (i) the developer does not proceed with the development activity and files a written request for a refund; (ii) the fees have not been spent or encumbered; and (iii) no impact has resulted. An impact that would preclude a developer from a refund from the City may include any impact reasonably identified by the City, including, but not limited to, the City having sized facilities and/or paid for, installed and/or caused the installation of facilities based, in whole or in part, upon the developer's planned development activity even though that capacity may, at some future time, be utilized by another development.

5. **Other Impact Fees.** To the extent allowed by law, the City Council may negotiate or otherwise impose impact fees and other fees different from those currently charged. Those charges may, in the discretion of the City Council, include, but not be limited to, reductions or increases in impact fees, all or part of which may be reimbursed to the developer who installed improvements that service the land to be connected with the City's system.

6. **Additional Fees and Costs.** The impact fees authorized hereby are separate from and in addition to user fees and other charges lawfully imposed by the City, and other fees and costs that may not be included as itemized component parts of the Impact Fee Schedule. In charging any such fees as a condition of development approval, the City recognizes that the fees must be a reasonable charge for the service provided.

7. **Fees Effective at Time of Payment.** Unless the City is otherwise bound by a contractual requirement, the impact fee shall be determined from the fee schedule in effect at the time of payment in accordance with the provisions of Section 6 below.

8. **Imposition of Additional Fee or Refund After Development.** Should any developer undertake development activities such that the ultimate density or other impact of the development activity is not revealed to the City, either through inadvertence, neglect, a change in plans, or any other cause whatsoever, and/or the impact fee is not initially charged against all units or the total density within the development, the City shall be entitled to charge an additional impact fee to the developer or other appropriate person covering the density for which an impact fee was not previously paid.

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3.22.050 Maximum Allowable Impact Fees Schedule

CULINARY WATER IMPACT FEE SCHEDULE

The Culinary Water Impact Fees shall be assessed as follows:

CULINARY WATER SYSTEM IMPACT FEE

Water Meter Size Equivalent ERUs Impact Fee

¾" 1.0 \$2812

1" 1.4 3,937

1 ½" 1.8 5,059

2" 2.9 8,152

3" 11.0 30,925

4" 14.0 39,361

STORM WATER IMPACT FEE SCHEDULE

The Storm Water Impact Fees shall be assessed as follows:

STORM WATER SYSTEM IMPACT FEE PER ERU

Lot Size Impact Fee

10,000 - 12,700 \$506.75

12,701 - 18,150 \$533.38

18,151 - 27,250 \$666.77

27,251 - 38,150 \$920.15

38,151 - 43,560 \$1,066.84

>43,651 \$25.50 per 1000 s.f

Commercial Units and Multi-Family Dwelling Residential

Units / per 1000 sq.ft.

Use Impact Fee / 1000 sq.ft. Lot size

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Agricultural \$14.69

Light Industrial \$97.96

Heavy Industrial \$110.21

General Commercial \$102.86

Neighborhood Commercial \$102.86

Business \$102.86

Shopping Centers \$116.33

Multi-family (detached) \$73.47

Multi-family (attached) \$91.84

Apartments \$85.72

PARKS & RECREATION IMPACT FEE SCHEDULE

The Parks & Recreation Impact Fees shall be assessed as follows:

PARKS & RECREATION IMPROVEMENTS IMPACT FEE

Development Type Fee

Low-Density Residential \$1,099.68 per Dwelling Unit

Medium-Density Residential \$939.12 per Dwelling Unit

PUBLIC SAFETY IMPACT FEE SCHEDULES

The Police Facilities Impact Fees shall be assessed as follows:

POLICE FACILITIES IMPACT FEE

Development Type Fee

All Residential Classes \$148.07 per Dwelling Unit

All Non-Residential Classes \$19.51 per 1,000 of Lot Space

PUBLIC SAFETY FIRE IMPACT FEE SCHEDULES

The Public Safety Fire Impact Fees shall be assessed as follows:

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FIRE DISTRICT FACILITIES IMPACT FEE

Development Type Fee

Single Family \$378.00 per dwelling unit

Multi-Family \$169.00 per dwelling unit

Hotel/Motel \$258.00 per room

Nursing Home \$3,887.00 per room

Commercial \$1,719.00 per acre

Office \$1,321.00 per acre

School \$2,212.00 per acre

Church \$236.00 per acre

Industrial \$436.89 per acre

ROADWAY IMPACT FEE SCHEDULES

Land Use Categories Trip Ends Adjustment

Factor

Impact Fee

Cost per trip \$ 53.78

Non-Residential (per 1,000 Sq. Ft. of bldg)

Agricultural 2.5 40.00% \$ 5.78

General Commercial 42.9 21.00% \$ 484.54

Manufacturing Distribution 3.8 45.00% \$ 91.97

Professional Office 11.4 50.00% \$ 306.57

Business Park 12.8 45.00% \$ 309.80

Mixed Commercial 22.0 45.00% \$ 532.46

Shopping Center 50.0 21.00% \$ 564.73

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Convenience Market w/gas pumps 845.6 5.00% \$ 2,273.98

Warehousing 5.0 45.00% \$ 121.01

Recreational Center 13.6 21.00% \$ 153.61

Hotel 8.2 21.00% \$ 92.62

Bank w/drive-up window 265.2 10.00% \$ 1,426.40

Movie Theater 44.5 40.00% \$ 958.00

Specialty Shops 40.7 21.00% \$ 459.35

Outlets 26.6 21.00% \$ 300.32

Restaurants 90.0 35.00% \$ 1,693.25

Fast Food Restaurants 496.1 10.00% \$ 2,668.33

Residential (per Dwelling Unit)

Low Density Residential 9.6 50.00% \$ 258.16

3.22.060 Fee Exceptions and Adjustments

1. **Waiver for "Public Purpose"**. The City Council may, on a project by project basis, authorize exceptions or adjustments to the then Impact Fee rate structure for those projects the City Council determines to be of such benefit to the community as a whole to justify the exception or adjustment. Such projects may include facilities being funded by tax-supported agencies, affordable housing projects, or facilities of a temporary nature.

a. **Procedures**. Applications for exceptions are to be filed with the City at the time the applicant first requests the extension of service to the applicant's development or property.

3.22.070 APPEAL PROCEDURE

1. **Application**. The appeal procedure applies both to challenges to the legality of impact fees, to similar and related fees of the City and to the interpretation and/or application of those fees. By way of illustration, in addition to the legality of the impact fee schedule, determinations of the density of a development activity or calculation of the amount of the impact fee due will also be subject to this appeal procedure.

2. **Declaratory Judgment Action**. Any person or entity residing in or owning property within the City and any organization, association or corporation representing the interests of persons or entities owning property within the City may file a declaratory judgment action challenging the

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validity of an impact fee only after having first exhausted their administrative remedies of this Section.

3. Request for Information Concerning the Fee. Any person or entity required to pay an impact fee may file a written request for information concerning the fee with the City. The City will provide the person with the Written Impact Fee Analysis and other information relating to the impact fee within fourteen (14) days after receipt of the request for information.

4. Appeal to the City Before Payment of the Impact Fee. Affected or potentially affected person or entity wishing to challenge an impact fee prior to payment may file a written request for information concerning the fee and proceed under the appeal procedure.

5. Appeal to the City After Payment of the Impact Fee; Statute of Limitations for Failure to File. Any person or entity that has paid an impact fee and wishes to challenge the fee shall file a written request for information concerning the fee within thirty (30) days after having paid the fee and proceed under the City's appeal procedure. If thirty (30) days has passed after payment of the impact fee and a written request for information or challenge has not been filed with the City, the person or entity is barred from filing an administrative appeal with the City or seeking judicial relief.

6. Appeal to the City. Any developer, landowner or affected party desiring to challenge the legality of any impact fee or related fee or exaction may appeal directly to the City Council by filing a written challenge with the City, provided that the affected party does so in writing within thirty (30) days after the action or decision to which the appeal relates. If no written challenge is filed with the City within the said thirty- (30) day's period, the affected party may neither process an administrative appeal with the City nor seek judicial relief.

a. **Hearing.** An informal hearing will be held not sooner than five (5) nor more than twenty-five (25) days after the written appeal to the City Council is filed.

b. **Decision.** After the conclusion of the informal hearing, the City Council, by majority vote, shall affirm, reverse, or take action with respect to the challenge or appeal as the City Council deems to be appropriate in light of the City's policies and procedures and any applicable law, rule or regulation.

The decision of the City Council may include the establishment or calculation of the impact fee applicable to the development activity at issue; any impact fee set by the City Council may include the establishment or calculation of the impact fee applicable to the development activity at issue. Fees set by the City Council may be the same as or higher or lower than that being appealed provided that it shall not be higher than the maximum allowed under the City's lawful impact fee rate or formula which is either in existence on the effective date of the Act or as promulgated under the Impact Fees Policy, as appropriate. The decision of the City Council will be issued within thirty (30) days after the date the written challenge was filed with the City as mandated by Utah Code Annotated §11-36-401 (4) (b). In light of the statutorily mandated time restriction, the City shall not be required to provide more than three (3) working days prior notice of the time, date and location of the informal hearing and the inconvenience of the

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hearing to the challenging party shall not serve as a basis of appeal of the City's final determination.

7. Denial Due to Passage of Time. Should the City, for any reason, fail to issue a final decision on a written challenge to an impact fee, its calculation or application, within thirty (30) days after the filing of that challenge with the City, the challenge shall be deemed to have been denied and any affected party to the proceedings may seek appropriate judicial relief from such denial.

8. Judicial Review. Any party to the administrative action who is adversely affected by the City's final decision must petition the District Court for a review of the decision within ninety (90) days of a final City decision upholding an impact fee, its calculation or application, or within one hundred twenty (120) days after the written challenge to the impact fee, its calculation or application, was filed with the City, whichever is earlier.

a. **Record of Proceedings.** After having been served with a copy of the pleadings initiating the District Court review, the City shall submit to the Court the record of the proceedings before the City, including minutes, and if available, a true and correct transcript of any proceedings. If the City is able to provide a record of the proceedings, the District Court's review is limited, by Utah Code Annotated §11-36-401 (5) (c) to the record of the Court may not accept or consider evidence outside of the record of proceedings before the City unless the evidence was offered to the City and improperly excluded in the proceedings before the City. If the record is inadequate, however, the Court may call witnesses and take evidence. The Court is to affirm the City's decision if the decision is supported by substantial evidence in the record.

3.22.080 Miscellaneous

1. Severability. If any section, subsection, paragraph, clause or phrase of this Impact Fee Policy shall be declared invalid for any reason, such decision shall not affect the remaining portions of this Impact Fee Policy, which shall remain in full force and effect, and for this purpose, the provisions of this Impact Fee Policy are declared to be severable.

2. Interpretation. This Impact Fee Policy has been divided into sections, subsections, paragraphs and clauses for convenience only and the interpretation of this Impact Fee Policy shall not be affected by such division or by any heading contained herein.

3. Effective Date. Except as otherwise specifically provided herein, this Impact Fee Policy shall not repeal, modify or affect any impact fee of the City in existence as of the effective date of this Ordinance. All impact fees established, including amendments and modifications to previously existing impact fees, after the effective date of this Ordinance shall comply with the requirements of this Impact Fee Policy.